

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA)
)
V.) NO. 2:08-CR-33
)
JEFF F. TILLOTSON)

ORDER

The defendant has filed a motion for a jury-out hearing on any Rule 404(b) evidence. (Doc. 38). This motion has been referred to the magistrate judge pursuant to the standing order of this Court and 28 U.S.C. § 636. A hearing was held on November 6, 2008.

As to the timing of disclosure of any 404(b) evidence, the Order on Discovery and Scheduling previously entered in this case controls: the government is required to disclose such evidence to the defendant not less than seven days in advance of trial.

Regarding the defendant's request that the court conduct a hearing outside of the presence of the jury regarding the admissibility of other crimes, wrongs, or acts, the rule itself does not explicitly state that any dispute regarding admissibility of such evidence must be held outside the presence of the jury, and the magistrate judge obviously cannot dictate to the district judge how he will conduct the trial of this case. That said, the magistrate judge is morally certain that the district judge will hear any objection to potential 404(b) evidence outside the presence of the jury. In this regard, the United States will provide advance notice to both defense counsel and the court before presenting any 404(b) evidence in order to give

defense counsel an opportunity to object and be heard on the matter.

SO ORDERED:

s/ Dennis H. Inman
United States Magistrate Judge

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